



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Valley Construction Co.
File: B-225695
Date: February 13, 1987

DIGEST

A bid that requests bids in part for the construction of a boat ramp in either a wet or a dry condition is responsive where it is based on either but not both alternatives.

DECISION

Valley Construction Company protests the award of a contract to either of the two lower bidders for the construction of a maintenance facility at the B. Everett Jordan Dam and Lake, Chatham County, North Carolina. The contract will be awarded under solicitation No. DACW54-87-B-0014, issued by the United States Army Corps of Engineers. Valley asserts that the low bids were nonresponsive and must be rejected.

We dismiss the protest.

The project consists of clearing and grading, paving, and the construction of several buildings, storage facilities, fuel dispensing facilities, a boat ramp and utilities, all within a 2.5 acre security fenced compound. The alleged nonresponsiveness involves items 30 and 31, the construction of a concrete boat ramp and its foundation.

The bids in question were as follows:

LDA, Inc.	\$1,426,093.00
J & W Builders, Inc.	1,458,792.60
Valley Construction Company	1,474,137.00

Item 30 includes all costs for construction of the ramp except the aggregate base course (the foundation), which differed depending on whether the entire ramp is constructed

in a dry condition or in a dry and wet condition. The aggregate base course (item 31) is listed in the solicitation as follows:

<u>Item</u> <u>No.</u>	<u>Description</u>	<u>Estimated</u> <u>Quantity</u>	<u>Unit</u>	<u>Unit</u> <u>Price</u>	<u>Estimated</u> <u>Amount</u>
31	a. Aggregate Base Course . . . (Dry)	72	ton		
OR					
	b. Aggregate Base Course . . . (Wet)	35	ton		
AND					
	c. Aggregate Base, No. 57M (Wet)	73	ton		

Valley bid \$14 a ton for each of subitems 31(a), (b), and (c) for an extended amount of \$1008, \$490 and \$1022 for each of the subitems respectively. Valley bid \$97,188 for construction of the boat ramp itself (item 30). According to Valley, neither LDA nor J & W entered a unit price for subitems 31(b) or 31(c) in contravention of the solicitation requirement that bidders must "quote on all items of the Schedule (Items 1 through 49)." Valley asserts that the two lower bids are nonresponsive because in the absence of prices for the two subitems the bidders are not committed to do the work in the wet, if required.

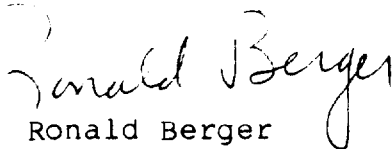
We agree that a bid that takes exception to a requirement of the solicitation is generally nonresponsive and cannot be considered for award, since the bidder has not legally obligated itself to do the exact thing called for by the solicitation. See Epcon Industrial Systems, Inc., B-216725, Dec. 27, 1984, 85-1 CPD ¶ 2. However, where alternative bids are requested, a bid based on either alternative is responsive. Riverport Industries, Inc., B-218056, Apr. 4, 1985, 85-1 CPD ¶ 390. The solicitation clearly requested alternative bids for item 31, so that a bid for either item 31(a) or the combination of items 31(b) and (c) or for items 31(a), (b) and (c) is clearly responsive and consistent with the requirement that bidders bid on all items. We reach this conclusion because the schedule clearly requested bids on a dry aggregate basis (31(a)) or on a wet basis (31(b)) and (31(c)). This interpretation is reinforced by section

20 of the specifications which at section 4 permits construction of the portion of the boat ramp below 216.0' m.s.l.^{1/} on a wet or dry foundation.

For example, section 4.2 of the specification states that "all concrete features of the boat ramp . . . (below elevation 216.0' m.s.l.) may be constructed in the wet or on a dry foundation." Section 4.4 states that if "the contractor elects to construct the boat ramp portion below 216.0' m.s.l. in the wet, he shall submit a diving plan to the Contracting Officer." (Emphasis added.) Section 4.5 requires the contractor to submit a dewatering plan to the Contracting Officer "should the contractor elect to construct this portion [below 216.0' m.s.l.] under dry conditions." (Emphasis added.)

On its face, then, we find no legal merit to the protest since the lower bidders did obligate themselves to construct the boat ramp and its foundation on a dry basis--one of the alternatives provided for in the solicitation.

The protest is dismissed.


Ronald Berger
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General Counsel

^{1/} An elevation 216 feet above mean sea level.